

LFC Requester:**Jon Clark**

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date January 29, 2016

Bill No: HJR 18

Sponsor: Rep. Carl Trujillo

Agency Code: 305

Short

Person Writing Rick Word

Title: Appointment of PRC Members

Phone: 827-6029

Email Rick.word@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

HJR 18 proposes an amendment to the New Mexico Constitution that would, among other things, change the manner of selection of members of the Public Regulation Commission (PRC). The proposed amendment would repeal Article XI, Section 1 of the New Mexico Constitution and replace it with a new Section 1.

Under this proposed amendment, the five PRC members would no longer be elected from districts, but would be appointed by the governor. However, in contrast with HJR 8 and SJR 7, this joint resolution proposes that the governor must appoint members within 30 days from a list of persons provided by PRC nominating committee. The proposed amendment retains the prohibitions against members serving more than two terms consecutively or from accepting anything of value from a regulated person or entity.

In addition to providing for the appointment, rather than election, of PRC members, the proposed amendment also:

- requires the governor and nominating committee ensure to the greatest extent practicable that members represent the ethnic diversity of the state;
- specifies that the PRC is a full-time commission and that its members be residents of New Mexico;
- provides that the legislature may, as opposed to shall, provide additional qualifications as well as continuing education requirements for members;
- provides that a member can be removed only for malfeasance, misfeasance, or neglect of duty following a hearing before the New Mexico Supreme Court, which has exclusive and final jurisdiction;
- specifies that the nominating committee be comprised of one person with knowledge of the PRC's work appointed by the speaker of the house, one such person appointed by the minority leader of the house, one such person appointed by the president pro tempore of the senate, and one such person appointed by the minority leader of the senate, as well as three retired district or appellate judges with relevant experience appointed by the chief justice of the supreme court;
- requires that the nominating committee meet within thirty days of vacancy occurring on the PRC to consider applicants and, following majority vote, recommend qualified applicants for appointment to the governor;
- establishes the objective that the commission, after the transition period, be comprised

of one member from each congressional district and two members from the state at large.

HJR 18 further provides that the proposed amendment be placed on the ballot in the next general election or any special election prior to that date called for that purpose.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

1. Whether to return to a prior New Mexico practice to provide for appointed rather than elected officials to the body that oversees State public utilities. In its various iterations over recent decades, New Mexico has vacillated between having an elected State Corporation Commission, an appointed Public Utility Commission and as currently provided an elected Public Regulation Commission. States around the country have been similarly split. One argument for elected commissioners is that they are arguably more responsive to the voters and all the State's citizens as a result of having to run for election. An argument in favor of appointed Commissioners, particularly with criteria for professional backgrounds as provided in SJR 7, is that the body can be composed of officials with proven expertise in the often complicated issues and areas being regulated, which can result in better informed decisions.
2. The proposed amendment specifies that the nominating committee shall meet within thirty days of a vacancy on the Commission. The provision is ambiguous, however, as to how long the committee then has to submit the names of qualified applicants to the governor.
3. The proposed constitutional amendment's provision that "[a] commission member shall be removed only for malfeasance, misfeasance, or neglect of duty after a hearing before the supreme court pursuant to court rules" (emphasis added) could be in conflict with, or create confusion as to the applicability of, other constitutionally sanctioned methods of removing public officials from office. One such method is impeachment. Article IV, Section 6 of the New Mexico Constitution states that "[a]ll state officials and judges of the district court shall be liable to impeachment for crimes, misdemeanors or malfeasance in office. . . ." Another is the writ of quo warranto. Article VI, Section 3 vests original jurisdiction with the supreme court for quo warranto actions. As our supreme court recently noted, "[o]ne of the primary purposes of quo warranto is to ascertain whether one is constitutionally authorized to hold the office he claims". *State ex rel. King v. Sloan*, 2011-NMSC-020, ¶9, 253 P.3d 33. By providing that a commission member can only be removed for malfeasance, misfeasance, or neglect of duty, the proposed amendment suggests that a member could not be removed pursuant to a writ of quo warranto where, for instance, they no longer met a requirement for serving as a member such as being a resident of the state or not working in a regulated industry. Correspondingly, by providing that a commission member could only be removed after a hearing before the supreme court, the proposed amendment can be interpreted to at least suggest that commission members, as state officials, are not subject to impeachment. The supreme court recognized in the *Sloan* decision that "the related constitutional powers of legislative impeachment and judicial quo warranto can co-exist as part of a harmonious, constitutional whole. . . ." *Sloan*, 2011-NMSC-020, ¶12, 253 P.3d 33. However, the use here of the qualifier "only" in the proposed amendment suggests otherwise.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HJR 8 and SJR 7 also provide for the appointment of PRC Commission members.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

It might be helpful to clarify the time frame within which the nominating committee must submit its list of qualified nominees to the governor.